



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Commerce, Community,  
and Economic Development**

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

550 West Seventh Avenue, Suite 1640  
Anchorage, Alaska 99501  
Main: 907.269.4501/907.269.4581  
Programs fax: 907.269.4539

# **Preliminary Report to the Local Boundary Commission**

Concerning the Petition for Detachment from and  
Concurrent Annexation to the City of Allakaket

July 2014



This is the *Preliminary Report to the Local Boundary Commission Concerning the Petition for Detachment from and Concurrent Annexation to the City of Allakaket*. The report was written by staff to the Local Boundary Commission (hereafter "LBC"). The staff is part of the Division of Community and Regional Affairs of the Alaska Department of Commerce, Community, and Economic Development (hereafter "Commerce" or "Department"). This report can also be found at the following address: [commerce.alaska.gov/dca/lbc/2014 Allakaket Detachment and Concurrent Annexation Petition/](https://commerce.alaska.gov/dca/lbc/2014_Allakaket_Detachment_and_Concurrent_Annexation_Petition/).

The report is preliminary and should be used for public review and comment in accordance with 3 AAC 110.530, which also requires LBC staff to issue a final report after considering written comments regarding the preliminary report.

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 269-4559/4587, TDD at 465-5437, or [LBC@alaska.gov](mailto:LBC@alaska.gov).

Graphic illustration only - this publication's maps are intended to be used only as general reference guides. Source documents remain the official record

# Chapter 1. Background

## ***Local Boundary Commission***

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### ***Local Boundary Commission's Constitutional Foundation***

Article X of the Constitution of the State of Alaska established the Local Boundary Commission (also referred to as "LBC" or "commission").<sup>1</sup> The commission is responsible for establishing and modifying proposed municipal government boundaries. The Alaskans who drafted the state's constitution believed that local governments should have authority to determine which powers they would exercise, and they also asserted their belief that the state should set municipal boundaries because "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."<sup>2</sup> Placing decision-making authority with a state body allows debate about boundary changes to be analyzed objectively, taking areawide or statewide needs into consideration.<sup>3</sup>

### ***Local Boundary Commission's Statutory Authority***

Pursuant to AS 29.06.040(a):

The Local Boundary Commission may consider any proposed municipal boundary change. The Commission may amend the proposed change and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise, it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62.

### ***LBC Duties and Functions***

The LBC acts on proposals for several different municipal (cities and boroughs) boundary changes. These are:

- incorporating municipalities;
- annexing to municipalities;
- detaching from municipalities;
- merging municipalities;
- consolidating municipalities;
- reclassifying municipalities; and
- dissolving municipalities.

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<sup>1</sup> Article X, Section 12 states, "A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

<sup>2</sup> Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962) (citing Alaska Constitutional Convention Minutes of Committee on Local Government, November 28 and December 4, 1955).

<sup>3</sup> *Id.*

In addition to acting on the above proposals for municipal boundary changes, the LBC under AS 44.33.812 shall:

- make studies of local government boundary problems; and
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

### ***Nature of the Commission***

Boards and commissions frequently are classified as quasi-executive, quasi-legislative, or quasi-judicial, based on their functions within the Alaska constitution's separation of powers framework. The LBC is a quasi-legislative commission with quasi-executive and quasi-judicial attributes, all of which are discussed below.

#### ***Quasi-Legislative***

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska gives the LBC legislative authority to make fundamental public policy decisions. The court stated that:

[T]he Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.<sup>4</sup>

Under AS 44.33.812(a)(2), the LBC carries out another quasi-legislative duty when it adopts "regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . ."<sup>5</sup>

#### ***Quasi-Executive***

Article X, section 12 of the Constitution of the State of Alaska placed the LBC in the state's executive branch. One example of the commission's quasi-executive duty under AS 44.33.812(a)(1) is to "make studies of local government boundary problems."

#### ***Quasi-Judicial***

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. The LBC is mandated to apply established standards to facts, to hold hearings, and to follow due process in conducting petition hearings and rulings.

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<sup>4</sup> *Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92, 98-99 (Alaska 1974). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Comm'n*, 863 P.2d 232, 234 (Alaska 1993).

<sup>5</sup> See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971), discussing applying due process requirements to develop boundary change standards and procedures in commission proceedings.

The LBC's quasi-judicial nature requires that a reasonable basis of support exist for the LBC's reading of the standards and evaluating the evidence. The LBC's quasi-legislative nature provides it with considerable discretion in applying those standards and weighing evidence.

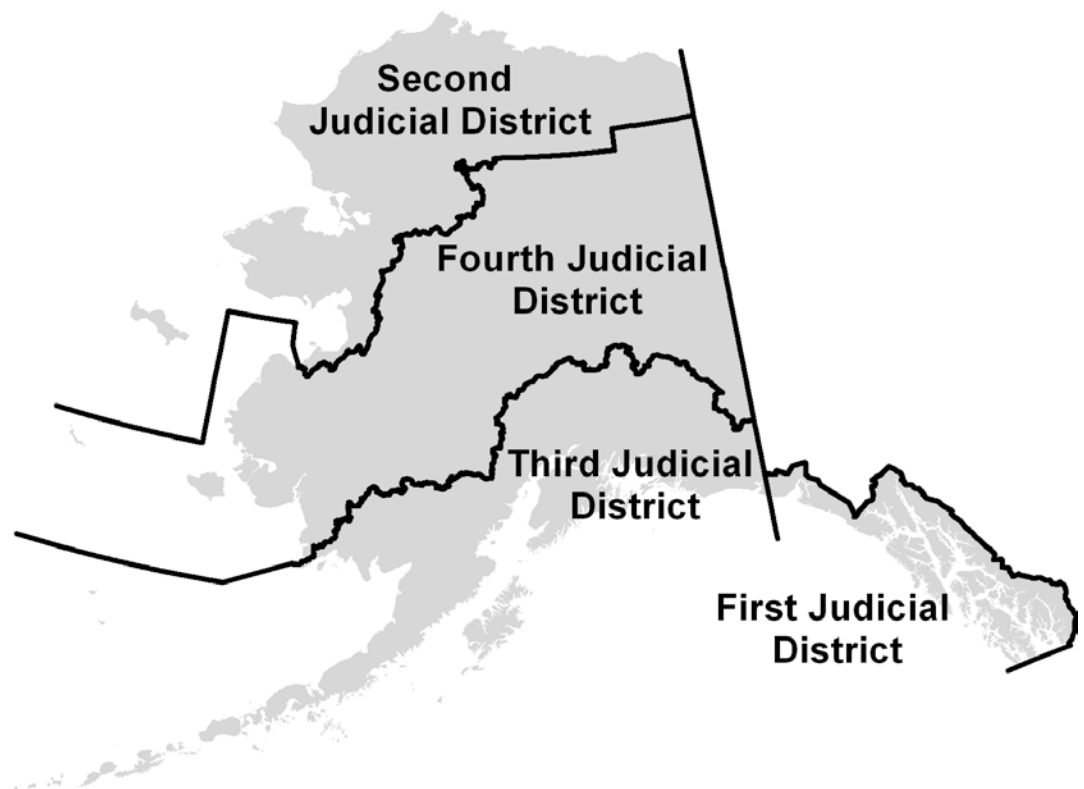
### ***Limits on Directly Contacting the LBC***

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds everyone's right to due process and equal protection. Those rights are preserved by ensuring that communications with the commission concerning municipal boundary proposals are conducted openly and publicly.

To regulate communications, the commission adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon a petition's filing and remains in place through the last date available for the commission to reconsider a decision. If a LBC decision is judicially appealed, the *ex parte* limitation extends to the last date of court ordered proceedings. All communications with the commission must be submitted through its staff.

### ***LBC Membership***

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding their terms' prescribed length, LBC commissioners serve at the pleasure of the governor [AS 39.05.060(d)]. The LBC is comprised of five members (AS 44.33.810). One member is appointed from each of Alaska's four judicial districts. The chair is appointed from the state at large. LBC members receive no pay for their service.



**Member Biographies:**



**Lynn Chrystal, Chair, At Large Appointment, Valdez**

Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District on March 27, 2007. Governor Parnell appointed him as the Local Boundary Commission's chair on September 10, 2009. Mr. Chrystal is a current resident and former mayor of the City of Valdez, and former member of the Valdez City Council. He has lived in Valdez since 1975. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez. Chair Chrystal has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. His current term on the LBC ends January 31, 2018.



**John Harrington, First Judicial District, Ketchikan**

Governor Parnell appointed John Harrington of Ketchikan to the Local Boundary Commission as the member from the First Judicial District on September 10, 2009. Mr. Harrington is a real estate manager and previously worked as an adult education coordinator in Ketchikan from 1985-97. He was also a special education teacher and administrator in Washington State from 1972-84. He served on the Ketchikan Gateway Borough Assembly 2005 through 2011, chairing the borough's Planning Liaison and Economic Development Advisory Committee, among others. His community service includes chairing the North Tongass Fire and EMS Service Area Board from 2002-05, serving on the Ketchikan Charter Commission from 2003-04, and serving as an elected member of the Ketchikan Gateway Borough school board from 1988-94. Commissioner Harrington earned a bachelor's degree in psychology and history from Western Washington University and a master's degree in educational administration from Seattle University. His current term on the LBC ends January 31, 2016.



**Robert "Bob" Harcharek, Vice Chair, Second Judicial District, Barrow**

Governor Knowles appointed Robert "Bob" Harcharek to the Local Boundary Commission as the member from the Second Judicial District on July 18, 2002. He serves as the commission's vice chair. In 1977, he earned a Ph.D. in international and development education from the University of Pittsburgh. Commissioner Harcharek served for three years in Thailand as a Peace Corps volunteer. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. Commissioner Harcharek recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. He served as a Barrow City Council member for fifteen years, and is currently serving as Mayor and Chief Administrative Officer for the City of Barrow. His current LBC term ends January 31, 2019.



**Darroll Hargraves, Third Judicial District, Wasilla**

Governor Parnell appointed Darroll Hargraves of Wasilla to the Local Boundary Commission as the member from the Third Judicial District on June 1, 2013. Mr. Hargraves is a consultant and owner of School and Community Resources. He is a retired school superintendent of the Nome and Ketchikan Gateway Borough school districts, and has served as the executive director of the Alaska Council of School Administrators. Commissioner Hargraves is a charter member of the Alaska Council of Economic Education, Commonwealth North, and the Wasilla Chamber of Commerce. A former member and chair of the LBC, he holds a master's degree in education, an education specialist degree from University of Alaska Fairbanks, and an honorary doctorate of letters degree from Oakland City University. His term ends on January 31, 2017.



**Lavell Wilson, Fourth Judicial District, Tok**

Governor Palin appointed Tok resident Lavell Wilson to the Local Boundary Commission as the member from the Fourth Judicial District on June 4, 2007. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995 before retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. His current term on the LBC ends January 31, 2015.

## ***Local Boundary Commission Staff***

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### ***Constitutional Origin***

The Constitution of the State of Alaska called for establishing an executive branch agency to advise and assist local governments (article X, section 14). The duty to serve as that local government agency is presently delegated to the Alaska Department of Commerce, Community, and Economic Development (Commerce, DCCED, or department). Commerce serves as staff to the LBC per AS 44.33.020(a)(4). Within Commerce, the Division of Community and Regional Affairs (DCRA) performs the local government agency's functions. This includes providing staff, research, and assistance to the LBC.

### ***LBC Staff Role***

LBC staff is required by law to investigate and analyze each boundary change proposal and to make recommendations regarding the proposal to the LBC. For each petition, staff will write at least one report for the commission. The report(s) is made available to the public. Staff recommendations to the LBC are based on properly interpreting the applicable legal standards, and rationally applying those

standards to the proceeding's evidence. Due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

The LBC staff provides support to the commission. The LBC's staff also delivers technical assistance to municipalities, residents of areas impacted by existing or potential petitions to create or alter municipal governments, petitioners, respondents, agencies, and the general public.

***Assistance the LBC staff provides includes:***

- answering citizen, legislative, and other governmental inquiries relating to municipal government issues;
- writing reports on petitions for the LBC;
- drafting LBC decisions;
- traveling to communities to hold meetings and to answer questions about proposed local boundary changes;
- drafting for the LBC an annual report to the legislature;
- developing and updating municipal incorporation or alteration forms;
- sending local boundary change forms and materials to interested persons;
- providing a link between the LBC and the public;
- coordinating and scheduling LBC public meetings and hearings;
- developing orientation materials and providing training for new LBC members; and
- maintaining incorporation and boundary records of Alaska's municipal governments;
- maintaining and preserving LBC records in accordance with Alaska's public records laws.

***The LBC staff contacts:***

Local Boundary Commission staff  
550 West Seventh Avenue, Suite 1640  
Anchorage, Alaska 99501-3510  
Fax: (907) 269-4563    Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Brent Williams: (907) 269-4559  
[brent.williams@alaska.gov](mailto:brent.williams@alaska.gov)

Brice Eningowuk: (907) 269-4587  
[brice.eningowuk@alaska.gov](mailto:brice.eningowuk@alaska.gov)

***Petition Procedures***

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Procedures to establish and alter municipal boundaries and to reclassify cities are designed to ensure every proposal's reasonable and timely determination. The procedures are also intended to ensure that commission decisions are based on applying the standards to the facts.

***Preparing and Filing a Petition***

The LBC staff offers technical assistance, information, and forms to prospective petitioners. When a petition is prepared, it is then submitted to staff for filing. The staff will then review the petition to identify any deficiencies in form and content. This can allow petitioners to correct the draft before it is



either circulated for voter signatures or adopted by a municipal government. If the staff finds that the petition contains all the required information, Commerce accepts it for filing.

### ***Public Notice and Public Review***

Once a petition is accepted for filing, the staff arranges extensive public notice to provide ample opportunity for public comment concerning the petition. Interested parties have at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner then has at least two weeks to file one brief replying to public comments and responsive briefs.

### ***Analysis***

Following the public comment period on the petition, the LBC staff analyzes the petition, written comments, briefs, and other materials. Both the petitioner and the staff may conduct public informational meetings. If the petition is to incorporate, the staff must hold at least one public meeting within the boundaries proposed for incorporation. When the staff finishes its analysis, it issues a preliminary report including a recommendation to the commission.

### ***Commission Review of Materials, Public Hearings, and Decision***

LBC members review the petition, responsive briefs, written comments, reply briefs, and the staff report. The LBC is an autonomous commission. While the commission is not obligated to follow the staff's recommendations, it has historically considered the LBC staff's analyses and recommendations to be critical components of the record in municipal boundary proceedings. The LBC considers the entire record when it renders a decision.

The commission may tour the area before the hearing to better understand the area. Following extensive public notice, the LBC conducts a hearing. After the hearing, the LBC holds a decisional meeting. At the decisional meeting, the LBC may act by:

- approving the petition as presented;
- amending the petition (e.g., expanding or contracting the proposed boundaries);
- imposing conditions on approving the petition (e.g., requiring voter approval of a proposition authorizing levying taxes to ensure financial viability); and
- denying the petition.

### ***LBC Decisions Must Have a Reasonable Basis***

LBC decisions regarding petitions must have a reasonable basis. Both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must be rational.<sup>6</sup> The LBC must proceed within its jurisdiction, conduct a fair hearing and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law, or if the evidence does not support the LBC's decision.

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<sup>6</sup> See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if the decision has a reasonable basis.

The LBC must adopt a written decision stating the basis for its decision. Copies of the decision are issued to the petitioner, respondents, and others who request them. At that point the decision becomes final, but is subject to reconsideration. Within 18 days after the decision is mailed, any person may ask the LBC to reconsider its decision per 3 AAC 110.580(f). The LBC may order reconsideration on its own motion. If the LBC does not approve any reconsideration requests within 30 days of the decision's mailing date, all reconsideration requests are automatically denied.

### ***Implementation***

3 AAC 110.630(a) specifies conditions that must be met before a LBC final decision is effective. If the LBC approves a petition, the proposal is typically subject to approval by voters or disapproval by the legislature, depending on whether it was filed as a local action petition, or a legislative review petition, respectively. A petition that has been approved by the commission takes effect upon satisfying any stipulations imposed by the commission. If an election was held, certification of the legally required voter approval of the LBC's final decision is needed from the director of elections or the appropriate municipal official. If all of 3 AAC 110.630(a)'s requirements have been met, the department shall issue a certificate describing the effective change.

### ***Conclusion***

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This chapter has described the Local Boundary Commission's background, the role of the LBC staff, and petition procedures. Chapter 2 will discuss this petition's past and future proceedings.

## Chapter 2 – To Date and Future Proceedings

### ***Submission and Review of Petition***

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The petition was submitted to LBC staff on July 3, 2013, and accepted for filing on January 31, 2014 after recommended changes to the petition were addressed. Recommended changes ensured that the petition addressed the standards and procedural regulations for detachment and concurrent annexation.

### ***Public Notice***

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The Petition states and Commerce has determined that there is no newspaper of general circulation within the boundaries proposed for change. For that reason and per 3 AAC 110.450(a)(1), Commerce required the Petitioner to provide notice through other means designated to reach the public, as specified below under “Posting of Notice” and “Service of Petition.”

### ***Posting of Notice***

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Notice of filing was posted in the Allakaket city office, Allakaket tribal office, Alatna tribal office, Allakaket post office.

### ***Service of Petition***

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On January 31, 2014, the City of Allakaket served the following individuals in person, or via the United States Postal Service, a complete copy of the petition:

Harold David Sr., 1st Chief  
Allakaket Traditional Council  
PO Box 50  
Allakaket, AK 99720

Alatna Chief,  
Alatna Traditional Council,  
PO Box 70  
Allakaket, AK 99720

Edwin Bifelt,  
Shareholder Relations and Land Manager,  
K’oyit’ots’ina, Limited  
1603 College Rd.  
Fairbanks, AK 99709

Kerry Boyd, Superintendent  
Yukon-Koyukuk School District  
4762 Old Airport Way  
Fairbanks, AK 99709  
Alaska Power Company  
PO Box 3222  
Port Townsend, WA 98568

James S. "Steve" Titus P.E.  
Northern Regional Director  
Aviation Programs,  
State of Alaska  
Department of Transportation and Public  
Facilities  
2301 Peger Road, Fairbanks, AK 99709  
[steve.titus@alaska.gov](mailto:steve.titus@alaska.gov)

### ***Public Service Announcement***

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The petition states and Commerce has determined that a PSA cannot be broadcast through any local or regional radio stations because there are no radio and TV stations providing local service. For that reason the Petitioner was not required to submit a request to air a PSA.

### ***Deadline for Initial Comments and Responsive Briefs***

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The notice of filing invited written public comment concerning the proposed detachment and concurrent annexation. The comments and responsive briefs were due by April 2, 2014. No comments or responsive briefs were submitted.

### ***Deadline for Comments on this Report***

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The deadline for **receipt** of written comments concerning this report and its recommendations is 4:30 p.m., Friday, August 8, 2014. Submit written comments to:

LBC staff, 550 W. 7th Ave., Ste. 1640, Anchorage, AK 99501

Fax: 907-269-4539

Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

**and**

Lucy Strassburg, #6 A St., Allakaket, AK 99720

Fax: (907) 968-2241

Email: [strassburglucy@yahoo.com](mailto:strassburglucy@yahoo.com)

### ***LBC Public Hearing***

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The LBC has scheduled a public hearing on the Allakaket detachment and concurrent annexation proposal in Allakaket for mid-October, 2014. Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. Also, any member of the public may comment on the petition.

### ***Conclusion***

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This chapter has described the proceedings to date, and the future proceedings and deadlines. Chapter 3 will discuss the department's analysis.

# Chapter 3 – Department’s Analysis

## *Introduction*

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This preliminary report provides recommendations to the Local Boundary Commission (LBC). The LBC staff received no comments during the public comment period that ended April 2, 2014. The report addressed the applicable detachment and annexation standards by analyzing the petition. The petition and all pertinent documents are available at:

[commerce.alaska.gov/dca/lbc/2014\\_Allakaket\\_Detachment\\_and\\_Concurrent\\_Annexation\\_Petition/](http://commerce.alaska.gov/dca/lbc/2014_Allakaket_Detachment_and_Concurrent_Annexation_Petition/).

This is a preliminary report. There will be a public comment period on this report until August 8, 2014 (see notice in Appendix A). After reviewing the comments on the preliminary report, Commerce will issue a final report.

Due to some misunderstanding about the boundary change process following the 1994 flood, Commerce feels it is necessary to point out that traditionally it is up to the community or municipality, not the state, to initiate boundary change proposals. Commerce’s records indicate that no detachment occurred in 1994, or at any other time since.

In October 2000, the City of Allakaket provided elements of a preliminary draft of a petition for annexation of seven square miles and simultaneous detachment of 1.5 square miles from the City of Allakaket. Commerce returned the draft because the documents submitted lacked certain key components. The documents addressed only the annexation - the detachment of Alatna was not properly addressed in the draft materials. For those reasons, the October 2000 submission was not accepted for formal filing by the department. LBC staff wrote a letter in April of 2001 advising the city how to proceed if the city intended to seek the boundary changes. Commerce did not receive a revised petition until the present one was submitted on July 3, 2013.

## ***Legal Standards for Detachment and Annexation from Cities***

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Some standards contain factors that the commission “may consider” in determining whether the standard is met. They are guidelines or examples. As the factors use the word “may,” it is not required that the commission (or this report) consider those factors, only that the commission consider whether or not the overall standard is met.

The criteria used by the commission to evaluate the detachment from and concurrent annexation to the City of Allakaket are set out in AS 29.06.040 – 29.06.060, 3 AAC 110.090 - 3 AAC 110.150, 3 AAC 110.257 – 3 AAC 110.265, and 3 AAC 110.900 - 3 AAC 110.990. A summary of those criteria follows:

### ***Standards for Detachment from Cities***

#### ***3 AAC 110.257. Standards for detachment from cities***

*In accordance with AS 29.06.040(a), the commission may approve a proposal for detachment from a city only if the commission determines that the proposal*

*(1) meets applicable standards under the Constitution of the State of Alaska;*

- (2) *meets standards in 3 AAC 110.257 - 3 AAC 110.260 and 3 AAC 110.900 - 3 AAC 110.970; and*
- (3) *is in the best interests of the state.*

### **Analysis**

The analysis of 3 AAC 110.257 is addressed in the below regulations. Commerce finds that 3 AAC 110.257 is met.

### **3 AAC 110.260. Best interests of state**

- (a) *In determining whether detachment from a city is in the best interests of the state under AS 29.06.040, the commission may consider relevant factors, including*
  - (1) *the health, safety, and general welfare of the proposed remnant city and the territory after detachment;*
  - (2) *the ability of the proposed remnant city to efficiently and effectively provide reasonably necessary facilities and services after detachment;*
  - (3) *the reasonably anticipated potential for, and impact of, future population growth or economic development that will require local government regulation in the territory after detachment;*
  - (4) *the historical pattern of providing to the territory municipal services that have been, or should be, supported by tax levies in the territory;*
  - (5) *the historical pattern of cooperation and shared commitment between the people of the proposed remnant city and the people of the territory;*
  - (6) *the extent to which detachment might enhance or diminish the ability of the proposed remnant city to meet the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, 3 AAC 110.005 - 3 AAC 110.042, and 3 AAC 110.900 - 3 AAC 110.970;*
  - (7) *the extent to which a transition plan of a previous annexation has been implemented and is effective;*
  - (8) *the effect of the proposed detachment on the long-term stability of the finances of the proposed remnant city, other municipalities, and the state;*
  - (9) *whether the proposed detachment will promote*
    - (A) *maximum local self-government, as determined under 3 AAC 110.981; and*
    - (B) *a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;*
  - (10) *whether the territory's requirements for local government services will be adequately met following detachment;*
  - (11) *contemporary and historical public school enrollment data; and*
  - (12) *nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*
- (b) *If, to fulfill the requirements of (a)(10) of this section, the petitioner has proposed, or the commission requires, incorporation of the territory into a new municipality, the commission may condition the approval of the detachment upon voter approval of the incorporation.*

- (c) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for detachment that would create noncontiguous parts of the city or enclaves within the city does not meet the standards for detachment.*
- (d) Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for detachment from a city in an unorganized borough is a diminution of maximum local self-government and does not meet the standards for detachment.*
- (e) In order to promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, a petition for detachment that also seeks to incorporate a new city must propose that the new city will encompass a substantially larger population and territory than the population and territory proposed for detachment.*

### **Analysis**

The city and the territories proposed for detachment and annexation are all in the unorganized borough. The petition states and Commerce finds that the territory for detachment is uninhabited. Arguments could be made against detaching territory from a city in the unorganized borough because such detachments are often not in the best interests of the state. They are often not in the best interests of the state because they can cause a decrease in maximum local self government, and because they can weaken the viability of the remnant city.

But there can be no diminution of local self government here because nobody resides in the territory proposed for detachment. There are no structures of any kind in that territory. The territory's requirements for local government services will not be adversely affected because no services are provided to that uninhabited territory. Further, the City of Allakaket's viability will not be diminished because it will lose no residents, tax base, nor infrastructure as a result of the proposed detachment. The proposed detachment would not adversely affect the city's health, safety, and general welfare, or its ability to provide necessary services or facilities. After careful consideration of the above, Commerce finds that in this particular case, detachment is in the best interests of the state. 3 AAC 110.260(a) is met.

Subsection (b) does not apply because the petition is not proposing a new municipality.

Subsection (c) does not apply because the petition does not propose enclaves or noncontiguous parts of the city.

Subsection (d) is addressed in 3 AAC 110.981 later in this chapter.

Subsection (e) does not apply because the petition does not propose incorporation of a new city.

For the above reasons, Commerce concludes that the proposed detachment is in the best interests of the state and 3 AAC 110.260 is met.

### **3 AAC 110.263. Legislative review**

*Territory that meets the detachment standards specified in 3 AAC 110.257 – 3 AAC 110.260 may detach from a city by the legislative review process if the commission also determines that any one of the following circumstances exists:*

- (1) the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and detachment will enable the city to regulate or control the detrimental effects of those conditions;*
- (2) it is impossible or impractical for the city to extend facilities or services to the territory;*
- (3) residents or property owners within the territory have not received, and do not reasonably expect to receive, directly or indirectly, the benefit of city government without significant additional tax contributions;*
- (4) the commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through detachment of the territory by the legislative review process, and that detachment is in the best interests of the state.*

#### **Analysis**

Regarding (1), the health, safety, or general welfare of city residents is not nor will be endangered by conditions existing or potentially developing in the territory proposed for detachment. The most likely danger in that territory is flooding, but that does not pose a danger to city residents because nobody lives in the territory proposed for detachment. Further, should flooding reoccur, detachment would not enable the city to regulate or control the detrimental effects of those conditions because the territory proposed for detachment would no longer be in the city. Thus, (1) is not satisfied.

Regarding (2), the territory proposed for detachment flooded in 1994. Should a person build in that territory, it would be impractical and unwise for the city to extend services there because those facilities or services could be destroyed or damaged by any future flooding. Thus, (2) is satisfied.

Regarding (3), there is no evidence that any residents or property owners within the territory have not received, and do not reasonably expect to receive, directly or indirectly, the benefit of city government without significant additional tax contributions, so (3) is not satisfied.

Regarding (4), under the finding in 3 AAC 110.260 above, the commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through detachment of the territory by the legislative review process, and that detachment is in the best interests of the state. Thus, (4) is satisfied.

3 AAC 110.263 states that territory that meets the detachment standards specified in 3 AAC 110.257 – 3 AAC 110.260 may detach from a city by the legislative review process if the commission also determines that any one of circumstances. As Commerce finds that (2) and (4) are met, it follows that 3 AAC 110.263 is met.



The petition was submitted to Commerce for detachment and concurrent annexation using the local action method. That method requires approval of the majority of voters residing in the territory proposed for detachment. But there are no voters in the territory proposed for detachment. Even if the commission found that the standards for both detachment and annexation were met, the detachment proposal could not go forward under the local action method. This is because nobody lives in the territory proposed for detachment who can vote on the proposed detachment.

But, the proposed detachment could go forward under the legislative review method if the LBC both amends the petition to legislative review, and suspends 3 AAC 110.425 (which requires that legislative review petitioners hold a hearing before submitting the petition). LBC staff had recommended the City of Allakaket, the Allakaket Traditional Council, and the Alatna Traditional Council submit resolutions requesting the petition be changed from a local action petition to a legislative review petition. Commerce has received such resolutions from the City of Allakaket and the Alatna Traditional Council and those are located in Appendix C. This shows local support for changing the petition method to legislative review. Commerce recommends that the LBC amends the petition to do so, and also suspend 3 AAC 110.425 for this petition, as both Allakaket and Alatna governing bodies have expressed interest in the proposed detachment and annexation.

## ***Standards for Annexation to Cities***

### ***3 AAC 110.090. Need***

- (a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including*
- (1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;*
  - (2) existing or reasonably anticipated health, safety, and general welfare conditions;*
  - (3) existing or reasonably anticipated economic development;*
  - (4) adequacy of existing services;*
  - (5) extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and*
  - (6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.*
- (b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.*

## **Analysis**

Commerce finds the territory proposed for annexation does exhibit a need for a city government. In 1994, the Koyukuk River flooded. This caused homes and infrastructure along the river such as the city office, the water treatment plant, the washateria, the wastewater lagoon, the clinic, and the airport to be relocated outside of the current city boundaries. This caused residential and commercial growth beyond the existing boundaries of the city. The residents who relocated outside of the city boundaries receive city services. But they can no longer vote in city elections nor are they eligible to run for local offices. If the commission approves the annexation, the displaced residents will then be eligible to vote in city elections, run for elected positions of the city, and be included as city residents for state revenue programs. For that reason the territory proposed for annexation exhibits a reasonable need for city government. Commerce finds that 3 AAC 110.090(a) is met.

Essential municipal services cannot be provided more efficiently and more effectively by another municipality because Allakaket is in the unorganized borough, so there is no organized borough to provide services. There are no other municipal governments within 20 miles. The City of Allakaket is the most effective and efficient essential services provider in the region. For that reason, Commerce finds that 3 AAC 110.090(b) is met.

For the above reasons, Commerce finds that 3 AAC 110.090 is met.

### **3 AAC 110.100. Character**

*The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the*

- (1) land use, subdivision platting, and ownership patterns;*
- (2) salability of land for residential, commercial, or industrial purposes;*
- (3) population density;*
- (4) cause of recent population changes;*
- (5) suitability of the territory for reasonably anticipated community purposes;*
- (6) existing and reasonably anticipated transportation patterns and facilities; and*
- (7) natural geographical features and environmental factors.*

## **Analysis**

The territory proposed for annexation is compatible in character with the annexing city because the territory is populated by people who used to live within the current city limits, but then moved to higher ground after the 1994 flood. The city regards the residents of the territory proposed for annexation as being compatible with the residents in the city. To the residents of Allakaket, the territory proposed for annexation is considered a part of Allakaket, but just not within the current city boundaries. The territory proposed for annexation has experienced a considerable amount of growth since the flood of 1994. Residences, the city office, the airport, the clinic, and the new cemetery are in the territory to be annexed. For those reasons, Commerce finds that 3 AAC 110.100 is met.

### **3 AAC 110.110. Resources**

*The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the*

- (1) reasonably anticipated functions of the city in the territory being annexed;*
- (2) reasonably anticipated new expenses of the city that would result from annexation;*
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;*
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for completion of the transition set out in 3 AAC 110.900;*
- (5) economic base of the territory within the city after annexation;*
- (6) valuations of taxable property in the territory proposed for annexation;*
- (7) land use in the territory proposed for annexation;*
- (8) existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;*
- (9) personal income of residents in the territory and in the city; and*
- (10) need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.*

### **Analysis**

The economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level because there are no new services to be introduced with the annexation, there are sufficient human resources, and the city has a budget surplus.

The city currently provides essential municipal services such as a city owned fuel retail store, water treatment facility, wastewater lagoon, and washateria to the territory proposed for annexation. The city will not offer new services or expand its services as a condition of this petition – it already provides services to the residents of the territory proposed for annexation.

Further, the proposed expanded boundaries of the city have sufficient human resources to effectively provide essential municipal services. The population to provide services already exists and is already providing those services. In 2013, the current city had 106 residents, and the New Allakaket Census Designated Place (CDP) had 67 residents. The city population after the proposed annexation would be 173. Commerce finds that the availability of skilled and unskilled persons to serve the city government will not change as a result of the proposed annexation, and so the city's ability to provide those services will not diminish if the commission approves the annexation.

There are also sufficient financial resources to provide essential municipal services. The transition is to be completed immediately following the annexation. The city budget includes those services provided in and outside the current city limits. Several years of budgets indicate that the city generates a revenue

surplus. The FY14 city budget has a surplus of \$94,748 and the projected FY15 budget has a surplus of \$86,388.48.<sup>7</sup> Although Commerce is concerned that the amount of the surplus has been decreasing for several years, and that there would be a smaller surplus after annexation, that appears to be due in part to the anticipated loss of payment in lieu of taxes (PILT) revenue. The surplus reduction does not appear to be influenced by annexation. Commerce finds that even with that lower surplus, it is an enviable surplus, and that the economy has adequate financial resources to provide essential municipal services efficiently and effectively. Moreover, other services (such as the clinic and a village public safety officer) located in the territory proposed for annexation are operated by the non-profit Tanana Chiefs Conference in the territories that include Allakaket, New Allakaket, and Alatna, and so do not require an increase of city expenditures.

For those reasons, Commerce finds 3 AAC 110.110 is met.

### **3 AAC 110.120. Population**

*The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including*

- (1) census enumerations;*
- (2) duration of residency;*
- (3) historical population patterns;*
- (4) seasonal population changes;*
- (5) age distributions;*
- (6) contemporary and historical public school enrollment data; and*
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

### **Analysis**

The population in the proposed expanded boundaries of the city is sufficiently large and stable enough to support the extension of the city boundaries. The city population after the proposed annexation would be 173.

From 2010 to 2013 the population of the territory proposed for annexation ranged from 66 to 68. After the 1994 flood, approximately 38 percent of the Allakaket population relocated into the New Allakaket CDP. In 2010, the top three age groups in the New Allakaket CDP were the 15 to 19 age group with 10 individuals, the 45 to 49 age group with eight individuals, and the 20 to 24 age group with seven individuals. This indicates a healthy population of younger people, so the community will continue to grow.

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<sup>7</sup> The final column in the budget table on page 1 of the petition shows a surplus of \$46,198.48, but that is a mathematical error. Also, although the figures in the bottom row are in red, that does not mean that there is a deficit. Instead, there is a surplus.

The Alaska Department of Education and Early Development has a report card for the Allakaket School. It can be found at <http://education.alaska.gov/reportcardtothepublic/>. In the 2009 – 2010 school year there were 38 students in the Allakaket School, in the 2010 – 2011 school year there were 41 students, in the 2011 – 2012 school year there were 44 students, and in the 2012 – 2013 school year there were 51 students. The Allakaket School is the only school for Allakaket, New Allakaket and Alatna. There has been a continued increase in student registrations from one school year to the next. This also indicates a healthy population of younger people, so the community will continue to grow.

Based on these data, Commerce finds that the population within the proposed expanded boundaries of the city is sufficiently large and stable to support the extension of city government. Commerce finds that 3 AAC 110.120 is met.

### **3 AAC 110.130. Boundaries**

- (a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*
  - (1) land use and ownership patterns;*
  - (2) population density;*
  - (3) existing and reasonably anticipated transportation patterns and facilities;*
  - (4) natural geographical features and environmental factors; and*
  - (5) extraterritorial powers of cities.*
- (b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*
- (c) To promote the limitation of community, the proposed expanded boundaries of the city*
  - (1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and*
  - (2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.*
- (d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.*

## **Analysis**

For 3 AAC 110.130(a), the proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. The size of the city after detachment and annexation will be approximately 17 square miles with a population of 173. That leaves a population to territory ratio of 173/17 or a population density of 10.18 people per square mile. This indicates sufficient land and water to provide essential municipal services. The proposed expanded boundaries of the city also include facilities used to support the City of Allakaket, such as the clinic, the city office, the washateria, and the wastewater lagoons. The proposed expanded boundaries also include not only a source of groundwater, but also more of the Koyukuk River. The river has cultural importance, but also provides for an alternate mode of transportation other than the airport. For all of these reasons, Commerce finds the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

For 3 AAC 110.130(b), Commerce finds that the territory is contiguous to the annexing city and does not create any enclaves.

For 3 AAC 110.130(c)(1), the proposed expanded boundaries of the city are on a scale suitable for city government because they include the existing City of Allakaket, plus the 67 residents who live outside the city. The proposed expanded boundaries also include reasonably predictable growth, development, and public safety needs because people already live in the territory proposed for annexation. The proposed expanded boundaries include existing city property and infrastructure, including a culturally important cemetery in section 30. It is anticipated that there will be growth and development in the cemetery as well.

For 3 AAC 110.130(c)(2), the proposed boundaries do not include entire geographical regions or large unpopulated areas. Assuming that they did, those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.

For the reasons above, Commerce finds that 3 AAC 110.130 is met.

### **3 AAC 110.135. Best interests of state**

*In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation*

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;*
- (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska; and*
- (3) will relieve the state government of the responsibility of providing local services.*

## **Analysis**

The proposed annexation is in the best interests of the state because it will include the territory where former city residents have relocated to, and will include infrastructure owned and used by the City of

Allakaket. Annexation will promote maximum local self-governance by extending the current local government to territory in the unorganized borough where no government exists. This will give those residents the opportunity to vote in city elections and run for city office. The proposed annexation will promote the minimum number of local government units as the territory will be annexed into an existing city, rather than incorporating as a new municipality. For those reasons, Commerce finds 3 AAC 110.135 is met.

### **3 AAC 110.140. Legislative review**

*Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:*

- (1) the territory is wholly or substantially surrounded by the annexing city;*
- (2) the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;*
- (3) the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;*
- (4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;*
- (5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;*
- (6) repealed 5/19/2002;*
- (7) annexation of the territory will promote*
  - (A) maximum local self-government, as determined under 3 AAC 110.981; and*
  - (B) a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;*
- (8) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 - 3 AAC 110.042, and is in the best interests of the state;*
- (9) the commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.*

### **Analysis**

If at least one of the nine factors exists, territory can be annexed by the legislative review method. For 3 AAC 110.140(1), the territory is not wholly or substantially surrounded by the annexing city, so (1) will not apply. For 3 AAC 110.140(2), the health, safety, or general welfare of the city residents will not be endangered by conditions or potentially existing in the territory, so (2) will not apply. For 3 AAC 110.140(3), it is not necessary for the city to annex the territory in order to provide services to city

residents. For 3 AAC 110.140(4), while the city currently extends city services to the residents who live outside the city borders, the city does not levy any taxes, so (4) does not apply. For 3 AAC 110.140(5) there is no evidence that annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city, so (5) does not apply. 3 AAC 110.140(6) is repealed. For 3 AAC 110.140(7), the territory proposed for annexation is in the unorganized borough, and is served by no other local government. Annexing that territory will promote maximum local self-government by extending the city boundaries to a territory and population where no municipal government currently exists. The proposed annexation also promotes the minimum number of local governments by extending the boundaries of the current city rather than incorporating a new city in the territory, so (7) applies. For 3 AAC 110.140(8), the proposed annexation does promote the standards for incorporation of cities because the incorporation standards include factors such as whether the proposed city has human and financial resources necessary to provide essential municipal services. Having a city with more people would show that there are more human resources to provide those services. The increased population would also gain a small amount (\$3,188) in community revenue sharing funds. While that is a small amount of money, it demonstrates an increase. Further, while the city does not levy taxes nor is there any evidence that it wishes to do so, an annexation would increase potential for increased revenue. Further, there would be a larger population, which can be considered when evaluating whether a community should incorporate as a city. Regarding 3 AAC 110.140(9), the proposed annexation would serve the best interests of the state because the specific policies of maximum self government and a minimum number of local government units set out in the Constitution of the State of Alaska and AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state, so (9) applies. Commerce finds that 3 AAC 110.140(7), (8), and (9) are met.

It is better that the petition be a legislative review petition than a local action one because there are no voters to vote within the territory proposed for detachment. This, the petition cannot go forward as it is, unless the commission amends the petition to change it to a legislative review petition, or amends the petition to exclude the territory proposed for detachment. The petition, local residents, and the territory are best served if the petition follows the legislative review process. Without it, the petition cannot be approved in its entirety.

Commerce finds that 3 AAC 110.140(7), (8), and (9) are met, and that the territory can be annexed using the legislative review method. Commerce finds that amending the petition to follow the legislative review method is the better option for this for the entire petition and recommends the commission honor the requests from the community to process the petition as a legislative review petition.

## ***General Provisions [Detachment and Annexation to Cities]***

### ***3 AAC 110.900. Transition***

*(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the*



*proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*

- (b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*
- (c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*
- (d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.*
- (e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*
- (f) If a prospective petitioner has been unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

### **Analysis**

For 3 AAC 110.900(a), the City of Allakaket is the only municipal government within 20 miles of the proposed boundary change. No services are provided in the territory proposed for detachment, and services have been and will continue to be provided to the territory proposed for annexation. No new

services are proposed in the territory proposed for annexation. The Village Public Safety Officer program will continue to provide law enforcement to both the remnant city and the territory proposed for detachment. The transition of services will be immediate. Commerce finds that the transition plan does include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for annexation change in the shortest practicable time after the effective date of the proposed change.

Regarding 3 AAC 110.900(b), Commerce finds that it is not pertinent because no relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change would be assumed. The powers, rights, duties, and functions are already assumed by the city in the territory proposed for annexation. The city is not exercising any powers, duties, rights, or functions in the territory proposed for detachment.

Commerce finds that 3 AAC 110.900(c), is not pertinent because there are no assets or liabilities to be transferred and integrated. All assets and liabilities are already owned by the city and will remain there.

Regarding 3 AAC 110.900(d), Commerce finds that it is unnecessary for the commission to require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

Commerce finds that 3 AAC 110.900(e) is not pertinent because no consultation was necessary.

Commerce finds that 3 AAC 110.900(f) is not pertinent because there is no need for the petitioner to request a waiver.

Commerce finds that 3 AAC 110.900 is met.

**3 AAC 110.910. Statement of nondiscrimination**

*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*

**Analysis**

Nothing in these proceedings suggest that the proposed boundary changes will deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. To the contrary, the proposed annexation will open local elections to the residents displaced from the city by the 1994 flood of the Koyukuk River. The annexation will allow those voters outside of the city boundaries the ability to elect, run, and hold office with the city government. The

proposed detachment will not deprive any person of his or her civil or political rights because nobody lives in the territory proposed for detachment. Commerce finds that 3 AAC 110.910 is met.

**3 AAC 110.970. Determination of essential municipal services [(c) and (d) apply to cities]**

...

- (c) *If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that*
- (1) are reasonably necessary to the community;*
  - (2) promote maximum, local self-government; and*
  - (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.*
- (d) *The commission may determine essential municipal services for a city to include*
- (1) levying taxes;*
  - (2) for a city in the unorganized borough, assessing the value of taxable property;*
  - (3) levying and collecting taxes;*
  - (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in AS 14.14.065;*
  - (5) public safety protection;*
  - (6) planning, platting, and land use regulation; and*
  - (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.*

**Analysis**

The city provides essential municipal services including the washateria, water and sewer service, the wastewater lagoon, a fuel store, and a city dump. Commerce finds that these are reasonably necessary to both the present city and the territory proposed for annexation. The services promote maximum local self government because the city residents provide their own services through the city government, and make the necessary decisions about them.

Essential municipal services are currently being provided to the territory proposed for annexation. This is maximum local self government because the people currently residing outside of city boundaries would be able to fully participate in civic affairs, including decisions about essential municipal services.

The city is the most effective and efficient provider of essential municipal services to the territory proposed for annexation. As there is no other municipality nearby, the essential municipal services for both the proposed expanded boundaries of the city and the territory proposed for annexation cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. As there are no essential municipal services being provided to the territory proposed for detachment, the territory proposed for detachment will not lose any essential municipal services.

For those reasons, Commerce finds that 3 AAC 110.970 is met.

**3 AAC 110.981. Determination of maximum local self-government [(7) and (10) apply to city annexation and detachment]**

*In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

...

(7) *for city incorporation or annexation in the unorganized borough, whether the proposal would extend local government to territory and population of the unorganized borough where no local government currently exists;*

....

(10) *for city detachment in the unorganized borough, whether the*

*(A) proposal would*

*(i) diminish the provision of local government to the territory and population being detached;*  
*or*

*(ii) detrimentally affect the capacity of the remnant city to provide local government services;*  
*and*

*(B) local government needs of the detached territory and population can be adequately met by another existing local government;*

...

**Analysis**

The proposed annexation would extend local government to the territory and population of the unorganized borough where no local government currently exists. This would promote maximum local self-government to that territory by giving those residents the right to vote in city elections and run for municipal office.

As the territory proposed for detachment is unpopulated and has no infrastructure, the territory and population proposed for detachment have no local government needs. The proposed detachment would not diminish the provision of local government to that territory and population. Also, as the territory proposed for detachment is uninhabited and provides no tax revenue to the city, there is no showing that the proposed detachment would detrimentally affect the capacity of the remnant city to provide local government services.

As above, the territory and population proposed for detachment have no local government needs. Therefore, although the territory proposed for detachment is in the unorganized borough and there is no other city nearby, there is no need for local government needs of the detached territory and population to be adequately met by another existing local government. Thus, there is no diminution of maximum local self-government.

After considering the above, Commerce finds that the proposed boundary change would promote maximum local self-government.

**3 AAC 110.982. Minimum number of local government units [(7) and (9) apply to city annexation and detachment]**

*Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider*

...

*(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;*

...

*(9) for city detachment, whether the detached area, by itself, is likely to be incorporated as a new city*

...

**Analysis**

The boundaries of the City of Allakaket would be enlarged as a result of the proposed annexation. This will promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska because no new municipality would be incorporated.

The territory proposed for detachment is not likely to be incorporated as a new city due to its small size and the fact that it is uninhabited.

Commerce finds that both the territory proposed for annexation and the territory proposed for detachment would promote a minimum number of local government units because no new local governments would be formed.

**Conclusion**

---

Commerce finds that the city detachment and concurrent annexation standards are met for the legislative review method. It recommends that LBC amend this city detachment and concurrent annexation local action petition to make it a legislative review petition, and approve the petition to be presented to the legislature.

# APPENDIX A: Public Notice

## LOCAL BOUNDARY COMMISSION PUBLIC NOTICE

Notice of Public Comment Period on the Preliminary Report  
Concerning the Petition for Detachment from and Concurrent Annexation to the City of Allakaket

The Local Boundary Commission (LBC) staff preliminary report concerning the petition for detachment from and concurrent annexation to the City of Allakaket has been released. The petition and related documents are available for public review at the following locations:

The Allakaket city office, Monday – Friday, 9:00 am to 2:00 pm.  
Allakaket tribal office, Monday – Friday, 9:00 am to 5:00 pm.  
Alatna tribal office, Monday – Friday, 9:00 am to 2:00 pm.

The report will be posted as soon as possible on the LBC website:

[commerce.alaska.gov/dca/lbc/2014\\_Allakaket\\_Detachment\\_and\\_Concurrent\\_Annexation\\_Petition/](http://commerce.alaska.gov/dca/lbc/2014_Allakaket_Detachment_and_Concurrent_Annexation_Petition/).

If the report is not immediately available on the LBC website, contact the LBC staff to request a copy.

Any interested person or entity may file with the LBC written comments regarding the preliminary report. Written comments must be received in the LBC office by 4:30 pm on Friday, August 8, 2014. See 3 AAC 110.480 and 3 AAC 110.700 for filing requirements. Comments should also be sent to the Petitioner's representative with an accompanying statement that the comment was sent to the petitioner, or notify LBC staff of an inability to send comments to the petitioner.

The LBC has waived the requirement that commenters send a paper original of an electronically submitted comment. Questions concerning the petition may be directed to LBC staff at the below postal address, email address, or fax number, or by calling 907-269-4559 / 4587.

Submit comments to:

LBC staff, 550 W. 7th Ave., Ste. 1640, Anchorage, AK 99501

Fax: 907-269-4539

Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

and

Lucy Strassburg, #6 A St., Allakaket, AK 99720

Fax: (907) 968-2241

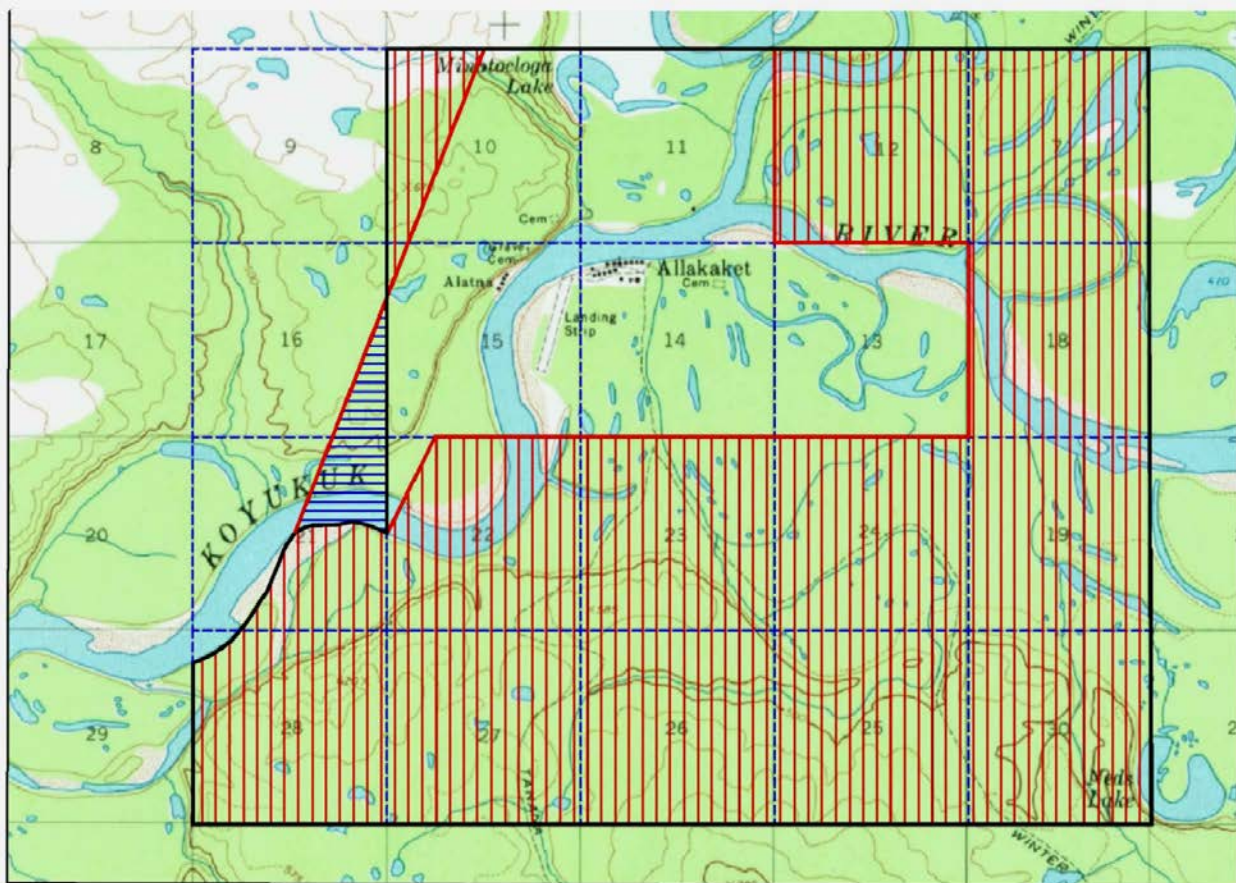
Email: [strassburglucy@yahoo.com](mailto:strassburglucy@yahoo.com)

Following receipt and consideration of comments on the preliminary report, LBC staff will issue its final report. Procedures governing departmental reports are set out in 3 AAC 110.530.

Persons interested in receiving future LBC notices, updates, and materials by email may subscribe to the LBC notice list server by visiting [list.state.ak.us/index.htm](http://list.state.ak.us/index.htm), selecting "DCED-Local Boundary Commission," clicking "join or leave," and following the instructions.



# APPENDIX B: Map



# APPENDIX C: Community Resolutions

## CITY OF ALLAKAKET RESOLUTION 2014-05

**A Resolution Requesting the City of Allakaket Annexation and Detachment now be done by legislative approval.**

**WHEREAS:** The City Council of Allakaket, hereinafter called the Council, is governing body of the City of Allakaket, Alaska, and

**WHEREAS:** The Council desires the Annexation of the new site and the detachment of Village of Alatna; and

**WHEREAS:** The Local boundary Commission staff have requested that the Allakaket City, Allakaket Tribe, and Alatna Tribe submit resolutions requesting that the petition for annexation and detachment now be done by legislative approval; and

**WHEREAS:** This council wants to have the issues of annexation and detachment finally settled.

**NOW THEREFORE BE IT RESOLVED:** That the Council approves this resolution.

I, the undersigned, hereby certify that the Council is composed of 7 members of who 4 constituting a QUORUM were present and that the forgoing resolution was **PASSED AND APPROVED** by the Council of City of Allakaket, Alaska this 28<sup>th</sup> day of May 28, 2014.

Vote: 6 Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Signed Steven Bergman Sr.  
Mayor,

ATTEST: Christie Vas  
City Clerk



**ALATNA VILLAGE COUNCIL  
RESOLUTION 2014-05**

**A Resolution Requesting the City of Allakaket Annexation and Detachment now be done by legislative approval.**

**WHEREAS: The Alatna Village Council herein after called the Council, is the governing body of the Village of Alatna, Alaska, and**

**WHEREAS: The Council desires the Annexation of the new site and the detachment of the Village of Alatna; and**

**WHEREAS: The Local boundary Commission staff have requested that the Allakaket City, Allakaket Tribe, and Alatna Tribe submit resolutions requesting that the petition for annexation and detachment now be done by legislative approval; and**

**WHEREAS: This council wants to have the issues of annexation and detachment finally settled.**

**NOW THEREFORE BE IT RESOLVED: That the Council approves this resolution.**

**I, the undersigned, hereby certify that the Council is composed of 4 members of who 4 constituting a QUORUM were present and that the forgoing resolution was PASSED AND APPROVED by the Council of the Alatna Village this 30th day of June, 2014.**

**Vote: 4 Yeas 0 Nays**

**Signed: Clara Sam  
Secretary/Treasurer**

**ATTEST: G.W. Bugman  
Administrative Assistant**